

REMARKS

This is in response to the Office Action mailed May 24, 2006.

Neither the "Office Action Summary" nor the "Detailed Action" officially cite the status of claim 21. As per MPEP 707.07(i), "each pending claim should be mentioned by number, and its treatment or status given." Applicants have assumed (based on the comments by the Examiner on page 7 of the Office Action of 5/24/2006) that claim 21 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. 2005/0228748 (Togher) in view of U.S. 6,839,690 (Foth). Hence, the comments with respect to the rejection of claim 21 are present based on this assumption.

Applicants would like to address that there have been numerous non-final office actions (dated 11/19/2004; 6/27/2005; 12/21/2005; and the current action dated 05/24/06) since the appeal brief filed on 05/03/2004. Applicants would like to respectfully remind the Supervisory Patent Examiner that as per MPEP 707.02, "Application up for Third Action and 5-Year Applications," the "supervisory patent examiners should impress their assistants with the fact that the shortest path to the final disposition of an application is by finding the best references on the first search and carefully applying the," and "any application that has been pending five years should be carefully studied by the supervisory patent examiner and every effort should be made to terminate its prosecution."

Further, as noted in the MPEP 707.05, "the Examiner should cite appropriate prior art which is nearest to the subject matter defined in the claims. When such prior art is cited, its pertinence should be explained." Applicants have respectfully requested throughout this response that the examiner specifically show in the references used in the office action the described elements of the claims.

Applicants respectfully request that reconsideration of this application is given in view of this response, and Applicants contend that the claims are allowable.

STATUS OF CLAIMS

Claims 1, 3-16, 21, and 23-28 are pending.

Claims 2, 17-20, and 22 are cancelled.

Claims 1, 3-16, 21, and 23-28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. 2005/0228748 (hereafter Togher) in view of U.S. 6,839,690 (hereafter Foth).

OVERVIEW OF CLAIMED INVENTION

The presently claimed invention provides an improved method of surveying prices located across an e-commerce environment (e.g., goods available in an auction, online catalog, or electronically connected supply center). The prior art has many systems which go out on the web and look-up prices and return the prices to the buyer. However, suppose a “small business” wanted to negotiate the absolute best price from various sources on 50 printers, but chooses not to reveal its identity for fear of an associated cost mark-up or lower discount; the present invention allows the use of sophisticated buyer profiles (previously created over time and recognized by the seller as such) to get the best quote. In this scenario, the sophisticated buyer profile may be disguised to look like a very large business to optimize a volume discount and you and the next buyer and the next buyer could use this large business profile to continuously get the best prices. The seller only thinks that a large business is purchasing large quantities of printers, and gives a maximum discount without ever knowing that in fact the repeated buying history is

performed by many smaller businesses. The present invention further will complete the purchase without ever revealing to the seller the true identity of the purchaser.

Another feature of the current invention is a method to uncover price structures, for example, to the airfare market. Airlines do not publish their fare structure. They do not make it clear how the fare depends on the time of the day, the day of the week and the date. The buyer tells the desired time of travel and the airline returns a fare. Airline fares are repeatedly probed by the present system for uncovering such structures. It then suggests to the buyers how money can be saved by changing the requested time of the day, day of the week, etc.

The present invention provides for a system and method facilitating transactions between buyers and sellers in an electronic commerce (e-commerce) model. When an item of interest is selected, the system scours the Internet to find the lowest price available for the desired product or service. Based on posted prices, bid prices, posted quotes, quoted prices, and auctions, the present invention ascertains wholesale prices and offers "advice" about the desired product or service. From the collected wholesale prices, reference points are generated that allow a system to determine whether a particular vendor's pricing is reasonable. Reference points allow a user to be directed to those vendors typically having the lowest wholesale prices.

Furthermore, to enhance a competitive e-commerce marketplace, anonymous and fictitious user profiles comprising identities and reputations as sophisticated buyers are created to survey prices quoted by vendors. In this manner, statistical distributions based on prices anonymously gathered by the system are generated such that an individual buyer can compare the

quote or price they receive from a vendor with those regularly observed by the system. The system also obtains specific quotes on behalf of a buyer using a fictitious name and identity. To preserve the anonymity of an individual buyer, an option to receive a shipment of the desired product at location different from that of the buyer is also provided.

In the Claims

REJECTIONS UNDER 35 U.S.C. § 103

Claims 1, 3-16, 21, and 23-28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. 2005/0228748 (Togher) in view of U.S. 6,839,690 (Foth). As per MPEP 706.02(j), to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure (In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)).

The Togher reference teaches an electronic brokerage system with credit management. The system of Togher allows traders to trade financial instruments by extending some, but not all, credit to one another by displaying the best market quote made by a trader at a trading floor and displaying the best dealable quote made by one or more credit bearing counterparties. The trader can then accept the best dealable quote displayed in the best dealable price area.

The Foth reference discloses “an Internet-based system that allows a buyer and seller to obtain information about each other while remaining *somewhat* anonymous” (emphasis added). A third party establishes a credit score for the buyer and seller. The third party gives the buyer and seller the other party’s credit score without revealing the actual identity of the parties in order to sell a product to the buyer from the seller. The buyer and seller may disclose their identity at any time during the process.

On page 2 of the office action of 05/24/2006, the Examiner cites the abstract and paragraphs 3, 6-9, 34, 39, and 43 of Togher as teaching all features of Applicants’ independent claims 1 and 27, except for the feature of “the anonymous buyer profile used multiple times to develop historical usage therefore, the historical usage representing a sophisticated buyer.” Applicants agree with the Examiner’s statement on page 2 that the Togher reference fails to teach Applicants’ feature of “the anonymous buyer profile used multiple times to develop historical usage therefore, the historical usage representing a sophisticated buyer.” However, Applicants respectfully disagree with the Examiner that the Foth reference teaches these limitations.

Specifically, the Examiner cites the abstract and column 1, line 29-column 2, line 24 of Foth as teaching Applicants’ “anonymous buyer profile used multiple times to develop historical usage thereof, the historical usage representing a sophisticated buyer.” However, a closer reading of the citations and the entire Foth reference merely teaches the use of a third party to determine a buyer’s and seller’s credit scores to contract for sale specified goods, receive funds or escrow from the buyer and/or seller, and deliver the specified goods. The use of determining a credit score for a buyer CANNOT be equated to the “anonymous buyer profile” that is used “multiple

times to develop historical usage” wherein “the historical usage represents a sophisticated buyer.” The credit score of the buyer in Foth is dependent upon: the dollar value of the transaction (that the buyer chooses to purchase), the type of purchase, the level of outstanding credit available, the terms extended to the buyer from the seller, and the amount of cash received by the buyer from the third party (see Foth, column 3, lines 1-6).

There is no teaching or suggestion of developing “an anonymous buyer profile” “multiple times to develop historical usage” in Foth. As noted in the MPEP 707.05, “the Examiner should cite appropriate prior art which is nearest to the subject matter defined in the claims. When such prior art is cited, its pertinence should be explained.” Applicants respectfully request that the Examiner specifically show in the Foth reference the following element: (1) anonymous buyer profile used multiple times to develop historical usage thereof, said historical usage representing a sophisticated buyer and included within at least one of said one or more automated surveyors. Absent such a teaching, Foth does describe or suggest the required element of an “anonymous buyer profile” as provided in independent claims 1 and 27.

Further, as per MPEP 706.02(j) and 2142, “when the motivation to combine the teachings of the references is not immediately apparent, it is the duty of the examiner to explain why the combination of the teachings is proper (Ex parte Skinner, 2 USPQ2d 1788 (Bd. Pat. App. & Inter. 1986)).” Applicants respectfully request that the examiner show the motivation to combine the Togher and Foth references, as neither reference show or suggested the elements of the independent claims, specifically the “anonymous buyer profile.” It is respectfully submitted that neither the individual references themselves, nor their combination, neither anticipate, nor render obvious, Applicants’ claims 1 or 27.

With respect to independent claim 12, Applicants agree with the Examiner's statement on page 5 of the office action that "Togher et al fail to teach the sophisticated buyers developed by historical use of anonymous buyer profiles" as provided in claim 12. However, Applicants respectfully disagree with the Examiner's contention that Foth teaches a method of electronically presenting information to sellers about "the sophisticated buyers developed by historical use of anonymous buyer profiles." The Examiner again references Foth column 1, line 29-column 2, line 24. As noted above, the Examiner's reference to column 1, line 29-column 2, line 24 of Foth merely discloses the use of a third party to disclose credit scores to the buyer or seller. The display of a buyer's credit score is not developed by "historical use of an anonymous buyer profile." Rather, the credit score of a buyer is dependent upon the dollar value of the transaction, the type of purchase, the level of outstanding credit available, terms extended to the buyer from the seller, and the amount of cash received by the buyer from the third party (see Foth, column 3, lines 1-6).

It is respectfully requested that the Examiner specifically show in the Foth reference the step of: (1) sophisticated buyers developed by historical use of anonymous buyer profiles. Absent such a showing, it is respectfully submitted that the individual references themselves or the combination of the Togher and Foth references anticipate or render obvious Applicants claim 12.

With respect to independent claim 21, Applicants agree with the statement on page 7 of the office action that "Togher et al fail to teach a system of generating fictitious user names." However, Applicants disagree with the Examiner's statement that "Foth et al teach a system of

generating fictitious user names.” The Examiner once again relies on column 1, line 29-column 2, line 24 of Foth as providing the features of claim 21. The above-mentioned arguments substantially apply to independent claim 21 as it recites any of the features recited in independent claims 1 and 12. Foth merely generates a credit score for the buyer and seller once the buyer chooses to purchase a product from the seller. It is respectfully requested that the Examiner specifically show in the Foth reference the steps of: (1) generating fictitious user names; (2) requesting price quotes using said fictitious name(s); (3) building reputation of said fictitious name(s) as sophisticated buyer(s); (4) continuously scanning commercial sites on a network using said sophisticated buyers to retrieve product price information, including at least quotes; (5) generating statistical distribution of said quotes, and (6) comparing a quote a known buyer receives to what has been observed in the system by the sophisticated buyer.

Based on the arguments presented above, Applicants respectfully contend that the combination of the ‘212 and ‘307 references fail to render obvious many of the limitations of independent claims 1, 12, 21, and 27. Hence, Applicants respectfully request the Examiner to withdraw the 35 U.S.C. §103(a) rejections of claims 1, 12, 21, and 27, and further request allowance thereof. Applicants also request the Examiner to withdraw the rejections with respect to dependent claims 3-11, 13-16, 23-26, and 28 as they depend upon an allowable independent claim.

SUMMARY

As has been detailed above, none of the references, cited or applied, provide for the specific claimed details of applicant's presently claimed invention, nor renders them obvious. It is believed that this case is in condition for allowance and reconsideration thereof and early issuance is respectfully requested.

As this response has been timely filed, no request for extension of time or associated fee is required. However, the Commissioner is hereby authorized to charge any deficiencies in the fees provided to Deposit Account No. 09-0441.

If it is felt that an interview would expedite prosecution of this application, please do not hesitate to contact applicant's representative at the below number.

Respectfully submitted,



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